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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators	)	CC Docket No. 94-158

AT&T'S COMMENTS

Pursuant to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry released on February 8, 1995 ("Notice"), AT&T Corp. ("AT&T") submits the following comments on the Commission's proposals to amend its rules concerning operator services providers ("OSPs") and call aggregators.

The Notice proposes two amendments to the Commission's rules. First, it proposes to modify the definition of the term "consumer" in Section 64.708(d)[1] to clarify that for purposes of collect calls the term "consumer" means both the calling party and the called party. Second, it proposes to expand the obligations of Section 64.706 to make the emergency call handling obligations now imposed on OSPs applicable to call aggregators. The NOI portion of the Notice solicits comments on whether the definition of the term "aggregator"

[1] 47 C.F.R. § 64.708(d).

should be expanded to include inmate-only telephones at correctional institutions and whether specific time limits should be adopted for the updating of consumer information postings on aggregator telephones.

I. Branding of Collect Calls

AT&T strongly supports the Commission's proposal to require OSPs to identify themselves to both the calling and called parties on collect calls. Indeed, AT&T believes that substantial consumer confusion has resulted from some carriers' refusal to identify themselves to both parties on collect calls.[2]

Collect calls are different from other operator services calls, because they require active participation from both parties to establish the call. Thus, the Notice (¶ 5) correctly finds that the calling and called parties "cooperatively initiate the [collect] call as consumers," that both must "make informed choices," and that "each may need protection from unfair and deceptive OSP practices that may have an impact on calling costs and call acceptance."

The Commission's existing rules require that branding information be provided to calling parties on

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[2] See July 14, 1993 letter from AT&T's Ronald B. Gramaglia, Division Manager, Federal Regulation to Robert Spangler, Deputy Chief, Enforcement Division, Common Carrier Bureau, appended as Attachment A.

collect calls, because it is the calling party who initiates the call.[3] This requirement is essential, because the calling party determines which OSP's network is being used to complete a call. If the calling party knows that a specific OSP is preferred (or required) by the called party, the caller needs immediate branding information to assure that the call will be accepted.[4] Similarly, if the calling party knows that certain OSPs are unacceptable to the called party, the caller must be able to know that he or she is avoiding such carriers.

It is also appropriate to view the called party as jointly participating in the initiation of a collect call. Thus, there is sound reason to require OSPs to provide branding information to such parties, because they must agree to accept the OSP's charges before a collect call commences. As the persons responsible to pay for the call, called parties should also be entitled to know who will be providing the service and rendering the bill.

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[3] Section 64.708(d) defines a "consumer" (i.e. the party entitled to branding information) as "a person initiating any interstate telephone call using operator services."

[4] A large proportion of collect calls are placed by persons who are calling their own homes or businesses, so that the calling and called party are, for practical purposes, the same.

AT&T currently brands collect calls to both the calling and called parties.[5] Thus, the proposed rule would not have any impact upon AT&T's costs. AT&T does not believe that any other OSP would incur substantial costs in complying with this important and necessary modification of the Commission's rules.

II. Aggregators' Handling of Emergency Calls

The proposal to modify Section 64.706 of the Commission's rules is both reasonable and necessary. Section 226(d)(4)(A) of the Communications Act[6] requires the Commission "as a minimum" to establish rules applicable to OSPs' and aggregators' handling of emergency calls, but the Commission's existing rules make no provision for aggregators. Thus, the Commission must adopt rules that will apply to such entities. The Notice (¶ 6) correctly finds that the current OSP emergency rules are general in nature and flexible enough to allow for appropriate responsive action by OSPs. This same standard is appropriate for aggregators as well.

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[5] Collect calls represent about 18% of all of AT&T's operator services calls.

[6] 47 U.S.C. § 226(d)(4)(A).

III. Treatment of Inmate-Only Telephones in Correctional Institutions

The Notice also initiates a Notice of Inquiry which requests comments on whether inmate-only telephones at correctional institutions should continue to be excluded from the definition of "aggregator" and thus exempt from the requirements of TOCSIA. Noting (¶ 9) that there have been complaints from persons who received collect calls from inmates, the Notice (¶ 10) inquires whether the Commission should make any changes to the rules applicable to inmate-only telephones.

AT&T does not support a rule change that would place inmate-only telephones under the definition of "aggregator" telephones. Issues of fraud control, protection of innocent third parties, and prisoner rehabilitation and control are all interwoven in the decision of when, how and whether prisoners should be allowed to make calls.[7] Thus, telephone privileges accorded to prison inmates are substantially different from calls made by ordinary consumers, and the Commission properly

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[7] These issues are exhaustively described in comments filed by correctional authorities and others during 1994 in In the Matter of Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77. Those comments also address other issues, such as the financing of telephone operations for such institutions.

recognized this "exceptional set of circumstances"[8] in crafting its current rules.

The complaints cited in the Notice (¶ 9) are focused principally upon the rates that called parties must pay for collect calls they receive from prisoners at correctional facilities. The rates for such calls are established by OSPs, not by correctional authorities.[9] Thus, any appropriate regulatory remedies can best be achieved through actions aimed directly at the OSPs who charge excessive rates, rather than by inhibiting correctional authorities' ability to control the conduct of prisoners.

IV. Time Limits for Updating Consumer Information on Aggregator Telephones

The Commission notes (¶ 12) that it has received reports that some aggregators are not promptly updating the consumer information on their telephones. In particular, there is a concern that aggregators are not informing consumers of changes in the presubscribed carrier for their telephones. The Commission asks whether it should establish

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[8] Notice, ¶ 8.

[9] Correctional authorities may have some limited ability to place a contractual cap on OSPs' prices, but control over the actual prices charged remains solely with the OSPs.

a specific time limit for updating such information, and if so, what an appropriate limit should be.

Consumer information is the key to the protections established by Congress in Section 226 of the Communications Act and by the Commission in its implementing rules. Without adequate information, consumers are subject to numerous potential OSP abuses and deceptive practices. The single most important fact for a consumer at an aggregator telephone to know is the identity of the presubscribed carrier for that phone. Thus, it is critical that consumers be provided current OSP information at all aggregator telephones as soon as possible. AT&T does not believe there is any reason why it should take aggregators more than 15 days to update information about carrier changes.

AT&T understands that some LECs who have received unauthorized change ("slamming") notices from OSPs have suggested that this fact might serve as an excuse to delay their updating of the consumer information on the affected phones. This argument ignores the critical issue. Section 226(b) grants consumers a statutory right to know the identity of the presubscribed OSP who will be handling calls from every aggregator phone. That right is not negated simply because an OSP has improperly caused an aggregator to change carriers. Aggregators should not be permitted to compound the potential harm from "slamming" by concealing

from consumers (or providing them with misinformation about) the identity of the OSP that is actually handling the calls from their phones. If aggregators in such a situation incur additional costs because they have followed the Commission's updating rules, their appropriate remedy is to recover such costs from the offending OSP.

CONCLUSION

The Commission should promptly adopt the two rule changes proposed in the Notice, and it should also propose and adopt a rule requiring the updating of consumer information on aggregator telephones within 15 days. The Commission should not, however, reclassify inmate-only telephones at correctional institutions as aggregator telephones.

Respectfully submitted,

AT&T CORP.

By 

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Dated: March 9, 1995

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July 14, 1993

Mr. Robert Spangler
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6206
Washington, D.C. 20554

Re: AT&T v. MCI IC-93-07605

Dear Mr. Spangler:

I am writing in response to MCI's July 12 letter, which replies to AT&T's complaint concerning MCI's failure to brand operator services calls placed using its 1-800-COLLECT offering. MCI readily concedes that it does not identify itself as the operator services provider ("OSP") to customers who place collect calls over that number. The sole basis that MCI proffers for its failure to provide branding to these callers is the astonishing (and, as shown below, wholly meritless) claim that it is not required to identify itself to these customers by the Telephone Operator Consumer Services Improvements Act ("TOCSIA"), 47 U.S.C. § 226, and the Commission's implementing regulation, 64 C.F.R. § 64.703 et seq..

TOCSIA and the Commission's rules require OSPs at the outset of a call to identify themselves "audibly and distinctly" to the consumer, which the statute and regulations define as "a person initiating any interstate telephone call using operator services." 47 U.S.C. § 226(a) (4); 47 C.F.R. § 64.708 (d) (emphasis supplied). MCI asserts that "[i]n proper context" a collect call is somehow "initiated" by the person who accepts the call charges, rather than by the customer who dials the telephone number of the called station to establish the call.

This tortured construction is completely unsupported by the language of TOCSIA and stands the statute's definition on its head. It is irrelevant that, as MCI observes, "the party accepting the charges is the customer responsible for payment for the [collect] call." TOCSIA's branding requirement (like the statute's signage requirement) is directed to the consumer that dials an operator services call, not to the party that pays for the call. For example, OSPs are required to audibly identify themselves to the call originator on third number calls, even though in many cases the customer of record (and, hence, the payer) for the third number card is the caller's employer or another family member.

MCI's argument is likewise unsupported by the legislative history of TOCSIA. The Congressional report quoted in MCI's letter makes clear that the purpose of branding is not simply to permit consumers to avoid an unwanted OSP (by hanging up before charges begin), but also to arrange placement of their calls over the consumers' preferred OSP. MCI's failure to provide branding to the call originator on calls dialed 1-800-COLLECT frustrates attainment of this statutory goal. At most, MCI's current procedure allows called parties to decline to accept collect call charges from that carrier; it does not, however, inform the calling consumers of the reason for such a refusal, or advise these customers of the need to redial the call over their preferred OSP.

MCI's strained interpretation of TOCSIA's legislative history is also belied by the fact that the purpose of that statute was to expand the protection available to consumers under the Commission's TRAC Order (Telecommunications Research and Action Center v. Central Corp., et al., 4 FCC Rcd. 2157 (1989). In that decision, the Commission found that an OSP is required to provide call branding "to every person who uses its service." TRAC Order, 4 FCC Rcd. at 2159, 2161 (¶ 14 and n. 27) (emphasis supplied). TOCSIA did nothing to narrow the branding requirements adopted by the Commission there.

At bottom, MCI's argument is simply an assertion that the calling party on a collect call has no legitimate interest in the selection of the OSP that will bill for that call. This claim is untrue. It is readily apparent that customers generally do not place collect calls to parties with whom they have no previous relationship; typically, the call is to the originator's residence or other family member (See Attachment A). Because of the frequent identity between the call originator and the billed party, collect callers have an obvious vital interest in, and need for, branding by the OSPs that provide this service.

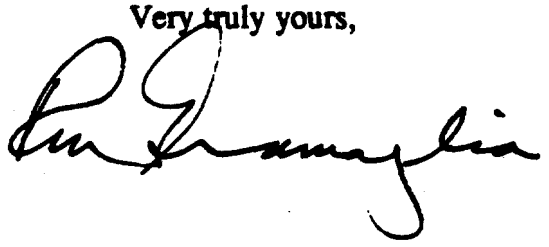
MCI's deliberate failure to disclose its identity to consumers placing 1-800-COLLECT calls (including even the omission of MCI's name from print and broadcast advertisements for this service) deprives customers of this necessary information and has an obvious propensity to engender confusion and dissatisfaction. (Indeed, the attached results of AT&T's recent market research demonstrate that more than 90 percent of the call originators polled erroneously believed that 1-800-COLLECT service is provided by an OSP other than MCI) (See Attachment B). This is precisely the type of abuse that TOCSIA and the Commission's rules are designed to prevent.

Finally, TOCSIA imposes an obligation on pre-subscribed OSPs in aggregator locations to "double brand" their calls. See 47 U.S.C. § 226 (b) (2). The Commission has codified that requirement in its rules and held that double branding applies "to all calls including collect calls." Policies and Rules Concerning Operator Services Providers, 6 FCC Rcd. 2744, 2760 (1991) (¶ 41) (See Attachment C). MCI claims, however, that calls to 1-800-COLLECT are exempt from this requirement (presumably even when placed from MCI pre-subscribed telephones in hotels and similar sites) because they are dialed with an access code.

MCI conveniently ignores that Congress excluded access code calls from the double branding requirement because "the consumer presumably knows the identity of the provider" and "has made an informed choice of that carrier." See S. Rep. No. 439, 101st Cong., 2d Sess. 11. MCI's active concealment of its identity in its advertising for 1-800-COLLECT negates the underlying basis for exempting it from the double branding obligation.

For the reasons described above, as well as in its initial letter of complaint, AT&T again requests the Enforcement Division promptly to find that MCI is providing 1-800-COLLECT service in violation of TOCSIA and the Commission's rules, and to assure that the violation is immediately corrected.

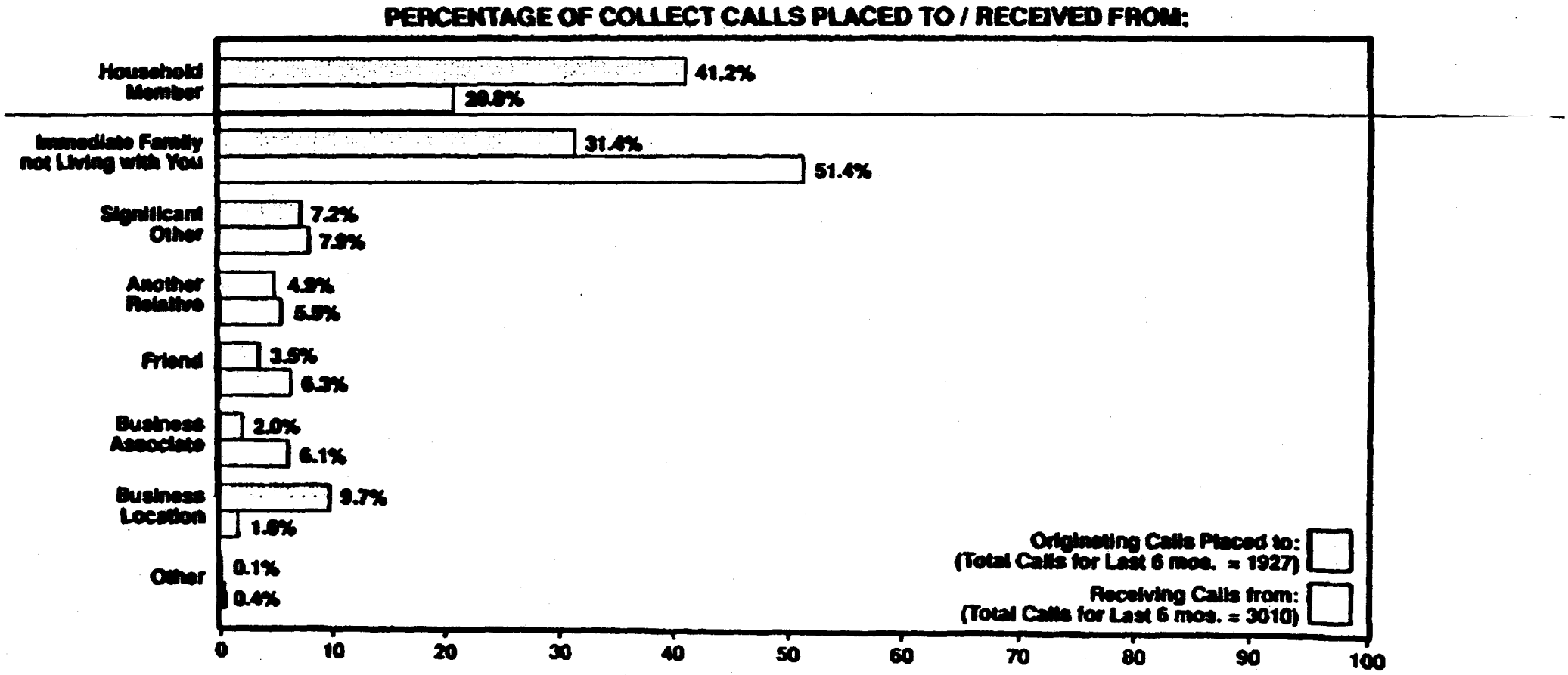
Very truly yours,



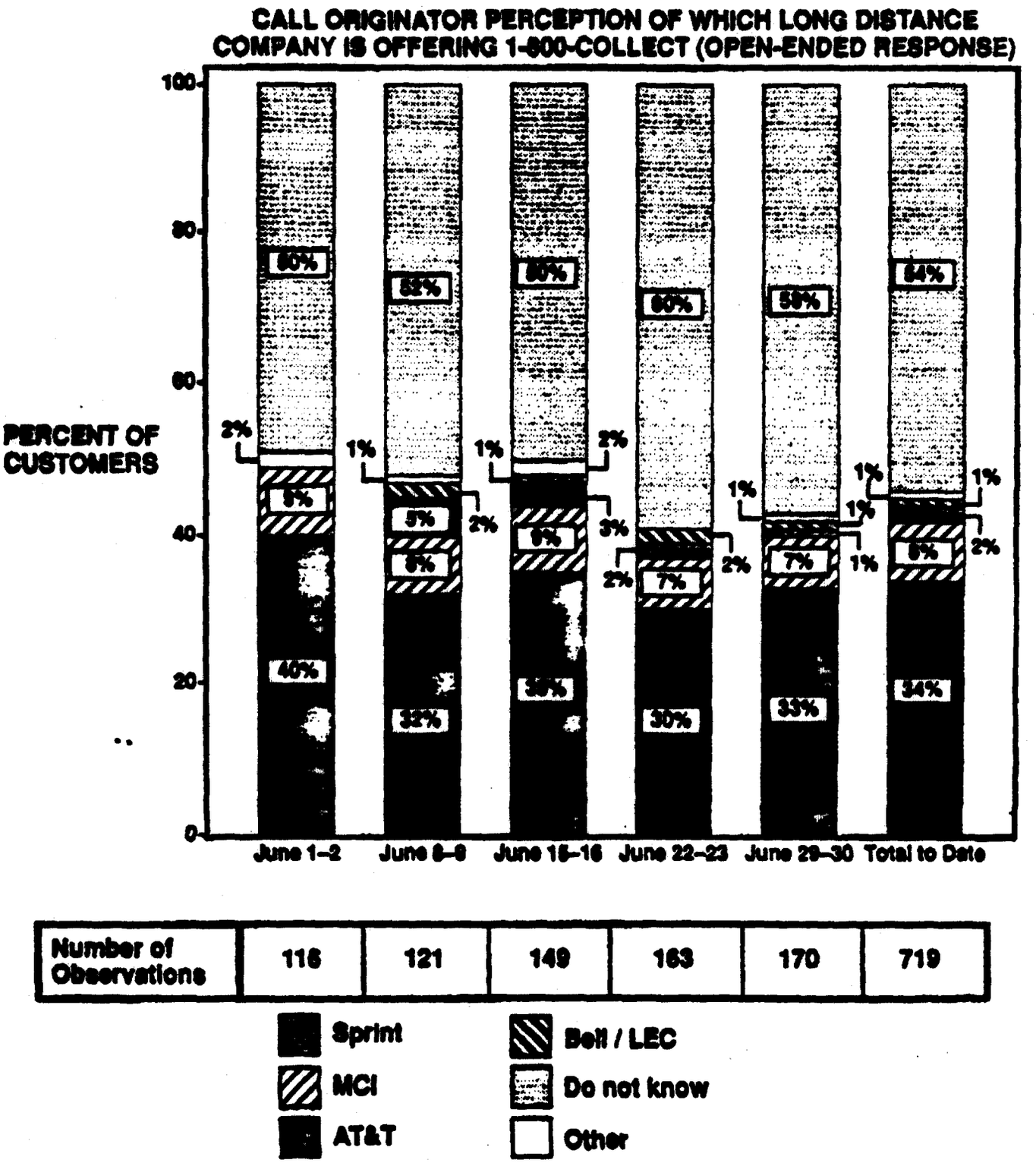
Attachments

cc: Kathie A. Kneff,
Chief - Informal Complaints and Public Inquiries Branch
Mary J. Sisak,
Counsel for MCI

- LARGEST CONCENTRATION OF COLLECT CALLS IS PLACED TO THE ORIGINATORS' OWN HOUSEHOLD
- MAJORITY OF COLLECT CALLS ARE RECEIVED FROM IMMEDIATE FAMILY NOT LIVING WITH THE RECEIVER



1-800-COLLECT — BRAND PERCEPTION
CALL ORIGINATORS



Note: Includes only respondents aware of 1-800-COLLECT